6.020 – Interactions with Foreign Nationals

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It is the Seattle Police Department's (SPD) intent to foster trust and cooperation with all people served by the department, including immigrant and refugee residents.

The department encourages any person who wishes to communicate with Seattle Police officers to do so without fear of questions regarding their immigration status.

6.020-POL-1-Definitions

Citizenship and Immigration Status: status that has been established to an individual under the Immigration and Nationality Act.

Court Order or Judicial Warrant: a directive issued by a judge or magistrate under Article III of the US Constitution or Article IV of the Washington Constitution. These include but are not limited to judicially authorized warrants or judicially enforced subpoenas. Civil immigration warrants and other warrants, subpoenas, or orders not signed by the above officials are not court orders or judicial warrants.

Federal Immigration Authority: any on-duty officer, employee, or person otherwise paid by, or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection, U.S. Citizenship and Immigration Services, and any present or future divisions thereof charged with immigration enforcement. "Federal immigration authority" includes, but is not limited to, the Enforcement & Removal Operations and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

Personal Information: information that includes but is not limited to names, dates of birth, addresses, GPS locations, telephone numbers, email addresses, social media handles, Social Security numbers, driver's license numbers, parents' or affiliates' names, biometric data, or other personally identifiable information.

6.020-POL-2 Employee Interactions with Foreign Nationals

The department recognizes that local law enforcement has no role in immigration enforcement. "Unlawful presence" in the country is a civil matter and not within the department's jurisdiction.

1. Employees Will Not Inquire About Any Person's Citizenship or Immigration Status

Exception: Unless there is a connection between the information provided and an investigation into a violation of state or local criminal law.

2. Employees Will Not Request Documents for the Sole Purpose of Determining a Person's Immigration Status

Employees may rely on immigration documents to establish someone's identity if they are the person's only source of identification.

A general request for adequate identification as part of a criminal investigation or to issue a Notice of Infraction is typically all that is necessary or appropriate.

3. Employees Will Not Initiate, Maintain, or Participate in any Police Action Based on an Individual's Immigration Status

SPD employees will not in any way engage in or assist in civil immigration enforcement.

SPD employees will not initiate or participate in law enforcement action based solely on an individual's immigration or citizenship status of place of birth.

SPD employees will presume that any federal immigration authority acting in their official duties are engaged in immigration enforcement.

SPD employees will not take enforcement action against or use immigration or citizenship status or place of birth against crime victims or witnesses.

SPD employees will not act on NCIC/WACIC hits based on an individual's immigration status issued by Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), or other Department of Homeland Security (DHS) agencies.

These hits may include some or all of the following language:

- "Administrative Warrant of Removal from the United States"

- "Immigration Violation – Failure to Appear for Removal"

- "Outstanding Warrant for Deportation"

Joint operations with federal agencies require Bureau Chief approval. The department designates personnel to assist federal agencies from time to time, and these operations

may involve the arrest of persons who have been previously deported and are currently involved in criminal activity. Any such joint operations, including access to SPD facilities, require approval in writing of the employees' Bureau Chief via the chain of command.

SPD sworn employees who are members of Federal Task Forces will continue in their normal partnerships but will not participate in or be directed to augment ICE in operations. Their normal duties with the Federal Bureau of Investigations, HSI, DEA, etc., should remain undisturbed.

SPD resources, including personal information, will not be used or shared to assist civil immigration enforcement.

SPD employees will not investigate, interview, or perform other similar functions within the presence or hearing distance of federal immigration authorities who are not directly connected to an SPD investigation into the violation of state or local criminal law and are necessary to perform the employees' duties.

4. Employees Will Notify a Bureau Chief, Through the Chain of Command, Before Contacting the DHS Regarding Foreign Nationals

Employees will not contact DHS or any agencies thereof, respond to DHS inquiries, or grant DHS access to police facilities under any circumstances involving a foreign national without first notifying a bureau chief or above and receiving approval to do so.

Reminder: Personal information may only be conveyed to federal immigration authorities pursuant to a court order, judicial warrant, or Public Records request.

5. Foreign Nationals Requesting Asylum

If an SPD employee is approached by a Foreign National seeking asylum, they should refer the Asylum Seeker to U.S. Citizenship and Immigration Services.

6. SPD Employees Processing Fingerprint Cards or Automated Biometric Identification System Submissions

SPD employees processing fingerprint cards or Automated Biometric Identification Systems will enter "Unknown" for fields addressing immigration, citizenship, or information status unless the information is otherwise known.

SPD employees processing fingerprint cards or Automated Biometric Identification System submissions will not attempt to gather citizenship or immigration status if the information is not already known to the employee and will enter "Unknown" in the appropriate fields.

6.020-POL-3 Arrest and Detention of Foreign Nationals

The Vienna Convention and other treaties outline notification procedures when a foreign national is detained or arrested. Consular officials may access their nationals in detention and provide consular assistance. However, notification places no obligation upon consular officials to perform any services on behalf of the foreign national.

Compliance with this policy enhances the ability of the United States to insist that foreign officials provide the same rights to United States citizens arrested abroad.

The US Department of State has more information on consular notification on their website.

Detainees in SPD custody will receive the same rights, services, opportunities, etc. regardless of citizenship or immigration status. Rights, etc. will not be limited based on a request by federal immigration authorities or immigration documentation.

1. Access to Persons Detained or in Custody

SPD employees will not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in SPD custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented.

To obtain written consent from a person held, detained, or in custody, prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, SPD employees will provide the person with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed and will not be punished or suffer retaliation for doing so.

The person may choose to be interviewed only with the person's attorney present. SPD employees will provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands.

SPD employees will maintain copies of the consent form in English, Spanish, and any other language that SPD deems appropriate.

If a person chooses to be interviewed with their attorney present, SPD employees will promptly contact the attorney. SPD employees will not proceed with permitting any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has chosen to proceed pro se.

2. Employees Will Notify Detained or Arrested Foreign Nationals of the Right to Consular Notification

Employees will not inquire about any person's citizenship or immigration status.

When an arrested or detained person *voluntarily* gives information or a search yields documentation that they are a foreign national, employees will advise the arrestee or detainee of the right to have consular officials notified. This applies regardless of suspect interrogation. The consular notification occurs after arrival at the precinct, jail, or other significant detention such as hospitalization, but before interrogation or booking (Department of State – Consular Notification and Access).

Note: A person who is a citizen of the United States and another country (dual citizenship) may be treated exclusively as a United States citizen when in the United States. Consular notification is not required if the detainee is a U.S. citizen. This is true even if the detainee's other country of citizenship is a mandatory notification country.

Absent other information, officers may accept the person's verbal notification, passport, or other travel document as evidence of the person's nationality.

The employee making the arrest makes the consular notification (see 6.020-TSK-1 Sworn Employee Making a Consular Notification).

3. Some Circumstances Trigger Automatic Consular Notification

The Department of State maintains a list of countries that require consular notification when one of their citizens is arrested or detained. Once a sworn employee is made aware that the arrested or detained person is a citizen of one of these countries, notification must be made regardless of the foreign national's wishes.

That list is located here: Mandatory Notification Countries.

The following circumstances also trigger automatic consular notification.

- When a government official becomes aware of the death of a foreign national,

- When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, or

- When a foreign ship or aircraft is involved in a collision or accident.

(See 6.020-TSK-1 Sworn Employee Making a Consular Notification)

4. Employees Will Record Details of Consular Notification in the Report

Employees will document the steps taken to notify the consulate or advise the arrestee/detainee of their right to consular notification.

5. Employees Will Verify Claims of Diplomatic Immunity

The Department of State issues identification cards to foreign nationals with diplomatic immunity. The degree of immunity is detailed on the back of the cards.

Once a person claims to be entitled to immunity, sworn employees will immediately advise the person that their immunity status must be verified and request identification to substantiate the claim.

If the person claiming immunity cannot provide documentation, and the offense would warrant arrest or detention, the sworn employee may continue to detain the suspect until confirming the individual's status.

If the claim of immunity is not valid, the sworn employee will follow standard procedures, keeping in mind the appropriate consular notification and/or advisement.

Employees may contact the Department of State with questions on diplomatic immunity. Their website contains phone and fax numbers.

6. Sworn Employees May Intervene for Public Safety Regardless of an Involved Person's Diplomatic Status

When a foreign national with full diplomatic immunity is involved in an incident, and the safety of the public is in imminent danger or a crime is imminent, sworn employees may intervene to halt such activity. This intervention may include, but not limited to, use of force and/or arrest if otherwise justified according to policy.

If a sworn employee has a person stopped, and the sworn employee believes the person is too impaired by alcohol/narcotics to drive safely, the sworn employee will not permit that person to continue to drive (even in the case of those with diplomatic immunity).

In these cases, the screening sergeant will contact the Department of State for guidance, as soon as feasible.

7. Sworn Employees May Stop Foreign Nationals for Investigation (Terry Stop) or Stop and Cite for Traffic Violations Regardless of Their Diplomatic Immunity

A stop for a traffic infraction is not considered an arrest or detention as it relates to diplomatic immunity.

8. Sworn Employees Will Thoroughly Document Incidents Involving Immunity

Investigating and preparing reports does not violate diplomatic immunity. Absent a public safety emergency, when a foreign national with full diplomatic immunity is suspected of committing a crime, sworn employees will obtain as much information as possible during the initial investigation.

In addition to the offense(s) being investigated, employees will list "Diplomatic-Personnel-Involved" in the "Offenses" section.

The primary sworn employee will send the report to a sergeant for approval, notify the sergeant directly, and send any paper documents to the Data Center in an Alert Packet.

The sergeant will route the report as an Alert packet after review and approval.

The Data Center will fax a copy of the report to the Department of State.

9. SPD Employees Will Not Transfer Custody of an Individual to Federal Immigration Authorities Without a Judicial Warrant or Court Order

Warrants must be confirmed as judicial warrants and verified before any transfer. The warrant confirmation process includes:

- Obtaining a copy of the warrant
- Identifying the criminal charge and federal law citation
- Identifying the issuing court
- Verifying that the warrant includes the correct date and time
- Confirming the warrant is signed by the correct judicial official
- Employees will not disclose the location of an officer or individual until the warrant is confirmed.

6.020-TSK-1 Sworn Employee Making a Consular Notification

The Department of State has mandatory and non-mandatory notifications in different languages and contact information for consular offices on their website.

When an arrestee/detainee voluntarily provides information or documentation that they are a foreign national, the **sworn employee**:

1. **Advises** the arrestee/detainee of the following:

    a. For a **mandatory** notification country:

    Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.

    b. For a **non-mandatory** notification country:

As a non-United States citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?

2. **Notify** that country's nearest consular official if required or requested by faxing or emailing the Consular Notification form (Form 58.0).

    - If a fax machine and email are not available, **call** to make consular notification and **document** the date, time, and point of contact in the report.

3. **Submit** the fax sheet and fax transmittal report or a printout of the sent email to the Data Center.

    - If the fax machine does not print a fax transmittal report, **record** the date and time the fax was sent in the report.

4. **Document** the method of notification or attempt in the report.

5. **Notify** jail staff if the suspect is being booked and notification has not yet been made.